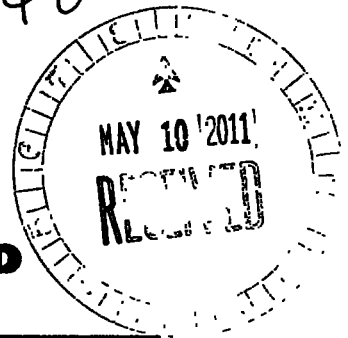


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. MC-F 21035

**STAGECOACH GROUP PLC AND COACH USA,
INC.et al.**

**-ACQUISITION OF CONTROL - TWIN AMERICA,
LLC**

AMICUS CURIAE STATEMENT

BY

KAREN FLEMING

ENTERED
Office of Proceedings

MAY 10 2011

Part of
Public Record

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May 1, 2011

IDENTITY AND OBJECTIVE OF AMICUS CURIAE

My name is Karen Fleming. I am the last ***Elected*** President of Transport Workers' Union Local 225. Over my signature, we, ("the Union"), made several submissions to the Surface Transportation Board in ***opposition*** to the captioned petition.

Members of TWU Local 225 are very aware that the current ***officials*** of TWU Local 225 have lately reversed the Unions' objection to Twin America's Acquisition and Control petition. However, we wish to inform the Surface Transportation Board that there are ***many*** members of TWU Local 225 who are ***not*** in agreement with the Union's ***current*** position.

Therefore, we interpose this document as acutely attentive and concerned non-participants. Our objective is to represent the unrepresented.

As this document has been prepared *in pro per* we beg the Boards indulgence as to any pro forma errors or inconsistencies which may be observed.

SPECIFIC COUNTERS TO THE VERIFIED STATEMENT OF ZEV MARMURSTEIN

Content in the Verified Statement of Zev Marmurstein (2/18/2011) in support of Twin America's Petition to Stay has given us pause. We find some assertions to be misleading at best and disingenuous at worst.

Twin America Repositioned the Gray Line and City Sights Brands

Paragraph 4 states:

"Twin America has dedicated its premier location to Gray Line operations,... near Times Square at 777 8th Avenue and at the Port Authority. [Bus Terminal, clarification added.]...

At first reading, and without corroboration, the STB may reasonably infer that some **change** has occurred here. We wish to clarify that 777 8th Avenue has **always** been the location of the Gray Line Visitor Center. 777 8th Avenue, on the ground floor, also includes Gray Line ticket sales desks, staff check-in and comfort facilities. Further, City Sights personnel and ticket holders have never been observed utilizing this location. In addition, according to the knowledge of the workforce, the Gray Line Center at the Port Authority had never been used by City Sights for Hop-on- Hop-off tours. Indeed, the Port Authority Facility comes out of a relationship with Coach USA. And, we know that Coach USA is notoriously circumspect when it comes to the sharing of assets.

Marmurstein V.S.

Paragraph 5 states:

"Twin America has substantially expanded Gray Line *tour* (emphasis added) options... For example, Twin America allocated the Ride of Fame initially developed by CitySights to its Gray Line Brand. Ride of Fame, modeled after Hollywood's Walk of Fame, permanently etches a New York Celebrity's image on one of Gray Line's double-decker buses, promoted by a ribbon cutting ceremony and bus ride with the inducted celebrity."

We believe that the paramount definition of the word "tour" in *this* case before the STB is a double-decker bus in motion with ticketed passengers on board. If this is agreed, then The Ride of Fame is not a "tour". A cursory examination of the Gray Line website and an informal survey of Union members makes it clear that Ride of Fame is an event, a marketing device, a public relations gambit, and charity affair, not a "tour."

Paragraph 7 states:

...."Twin America developed and branded its new Pink Bus Tour in association with Gray Line. For every passenger who takes the Pink Bus Tour, Twin America donates money to the Susan G. Komen Foundation. Twin America has branded the Pink Bus Tour with Gray Line and is in the process of finalizing the requisite licenses and agreements with third parties."

Upon casual examination of the above statement the Surface Transportation Board may easily deduce that the Pink Bus Tour is a *fait accompli*. This is not the case.

- 1. Twelve (12) Pink Bus Tour(s) were put out for bid (placed on the schedule selection list), for Spring 2011, for Gray Line Tour Guides.**
- 2. According to Management the Pink Tour "is not ready." Therefore, The Tour Guides assigned to the Pink Tour are working as extras (fill-ins, substitutes).**

3. Twin America Workforce has numerous reports from Hoboken that twelve CitySights "blue" buses (800 series) are being painted Gray Line "red" *and being outfitted with the Gray Line Blue Diamond Logo.*

4. Twin America Workforce members are concerned that Twin America Management appears to be contravening the orders of the STB which states, "...Applicants are cautioned, however, to proceed no further with steps to integrate these two companies during the pendency of the petition for reconsideration. ..."

Paragraph 8 states:

"Additionally, Twin America has developed three walking culinary tours that it markets exclusively under the Gray Line brand: The Ultimate Food and Culture Tour in the Village; Tastes of Chinatown (with Dim Sum); and The Original East Village Food Drinks and Culture Tour."

We could not find a single Gray Line employee past, or present who had ever heard of these walking tours as related to Gray Line. They have **never** been put out for bid assignment for Union members at Gray Line. However, we were able to locate the tours on the internet with the precise phraseology, on a web site called foodtoursny.com. This company apparently goes back to 1999, well before the formulation of Twin America. Moreover, we saw no indication of the Gray Line logo anywhere on the web site, nor any links or affiliations with Gray Line.

THE "INTEGRATION" ISSUE

In June of 2010, Transport Workers Union Local 225 provided the Surface Transportation Board with CD-ROM discs pertaining to National Labor Relations Board case #22-RC-13115. In that case, the Management of Twin America successfully argued that GL Lines (Gray Line) and City Sights **were not** integrated to the degree that the employees should be represented by one Union.

Operations are Fully Integrated and Cannot Be Split **Marmurstein V.S.**

Paragraph 11 states:

"Nor can Twin America partition its operations. Twin America has consolidated virtually every operational function into a single management team, call center, information technology, human resources, training department, marketing/advertising department and sales department. There is no obvious way to split these departments or functions."

While there may exist an overarching management team within Twin America, the labor force can attest to certain facts:

As to Dispatch Center Integration:

1. Gray Line Alexander Dennis brand buses are dispatched from, and serviced in, Hoboken, New Jersey, as they *always* have been.
2. There is a group of approximately one dozen late-entry, coach maker built, single axle (as opposed to factory manufactured double axle) double-deckers, brought to the fleet by Twin America. The 400's as they are known have recently been parked in Brooklyn. They are driven to and from Brooklyn **exclusively** by Gray Line Drivers. We should point out that all staff that must use these crossbreed vehicles find them inherently unsafe. The workforce has numerous reports of passengers being thrown out of their seats by the "tilt factor."
3. Gray Line Drivers DO NOT operate CitySights equipment. The reverse is also true.

4. CitySights buses are dispatched from, and serviced in, Brooklyn, New York.

5. Gray Line and CitySights operators and street dispatchers do not have radio communications integration.

As to Human Resources Integration:

1. The Human Resources Manager for the Gray Line employees is Mr. Travis Wade who is located at 777 8th Avenue.

2. The Human Resources Manager for the CitySights employees is Mr. Michael Booker who is located on West 50th Street.

UNION RELATIONS

Marmurstein V.S.

Paragraph 15 states:

‘Splitting Twin America apart, furthermore, would disrupt and likely cause a breakdown of the current union relations and negotiations that Twin America has been managing...Disrupting these ongoing negotiations could jeopardize the ability to enter new union contracts and potentially result in strikes or a complete degradation of the relationships with union employees.’

From the point of view of the totality of the Twin America Workforce this is, perhaps, the most galling of all statements contained in the Marmurstein Verified Statement.

1. Union relations are *already* in shambles and have been for some time.

2. City Sights employees, as they approached the end of their contract have demonstrated their ***complete dissatisfaction*** with the management controlled USWU (IUJAT) Local 1212 by:

- Enlisting the assistance of a T.W.U. Local 225 official in;
 - A. Forming The Tourism Workers Union of America in order to force an election for a democratic union.
 - B. Obtaining significant numbers of signed cards representing a "showing of interest" of a union membership desirous of change.
 - C. Inviting Teamsters Local 814 to participate in an election for new representation.
- See National Labor Relations Board
Case #29-RC-12020**

3. At Gray Line, the dissatisfaction of the Workforce with Union/Management relations is deep and palpable.

A. Last week Gray Line bus operators (members of Teamsters Local 944) were subject to a "wait and switch." After many months of waiting for a required contract meeting, they were sideswiped by their Union officials at their garage, (with the obvious acquiescence of Twin America Management) with a "take it or leave it, and sign right now" contract, which runs contrary to the By-laws of Teamsters Local 944.

B. Another group of employees has also been patiently waiting. Newly minted members of T.W.U. Local 225, the Gray Line Dispatchers, have now been waiting for over six months for their ***first*** contract. This lack of concordance between Twin America Management and T.W.U. Local 225 is made all the more conspicuous by the fact that this is a small group of about two dozen workers. Moreover, these new members suffered considerable pressure from management ***NOT*** to unionize, and are now being forestalled from exercising their right to a contract.

SUPPLEMENTARY ISSUES

1. We want the Surface Transportation Board to be aware that the many members of the Workforce have read the entire voluminous file as published by the Surface Transportation Board.
2. Should the Surface Transportation Board deem it necessary, we can provide a list of potential witnesses in all unionized positions, from CitySights *and* Gray Line who would be eager to testify in person and/or answer written interrogatories to clarify questions of the STB. Our livelihoods are at stake here.
3. The significance of the Gray Line Blue Diamond Logo needs to be highlighted here. While it has been mentioned in the Applicants' documents, the simple fact that **the Blue Diamond sells tickets** cannot be overemphasized.
4. We are aware that an **escape clause** exists within the original merger documents. Therefore, we find it ludicrous for the Applicants to *now* claim that the merger cannot be undone.
5. The oft-repeated mantra of the Applicants that Gray Line Management **does not know what is going on** pales in the face of the facts, as the workers know them. Mr. James Murphy continues to be the hands-on Management at 777 8th Avenue and Hoboken. His office has not moved, he is present in times of crisis and continues to make Management decisions to which we are subject. Moreover, the Applicants have suggested that if Gray Line is again a free standing company, it would somehow be impossible to find management to run it. Gray Line workers suggest that Mr. Derrick Clements could be rehired and given the opportunity to operate on Operations. From our point of view he is tried and true.
6. Twin America Workforce members continue to express concern that **competition** continue to exist within our industry. We want CitySights to remain a viable competitive entity. At the very least, we want to leave the playing field level for another player to bring in a competitive team. Amid our mounting concerns that Twin America Management is attempting another end run around the Surface

Transportation Board by converting CitySights (800 series) buses to Gray Line buses with a paint and logo job, we hereby raise a clamorous voice against this practice. We stand firm with the New York State Attorney General.

7. Many CitySights Union workers have commented on the poor condition of the CitySights buses. We fear that the large cost savings with regard to the maintenance of the buses, as purveyed by Twin America, rests largely on **lack of maintenance** as opposed to any appreciable “synergies.” Moreover, from the Gray Line workers point of view, to have vehicles of questionable safety and roadworthiness converted, willy nilly, into Gray Line vehicles with a mere paint job is a danger to our health and safety and this danger is multiplied exponentially for the unknowing passengers.

8. The Twin America Applicants have made much of the issue of “Intellectual Property and Trade Secrets.” This pompous attitude has caused an occasional giggle in the Workforce as it is so clear that this is not rocket science or brain surgery. However, while some Management methods introduced by Twin America have been positive insofar as the workers are concerned, on balance, and most **especially in our pockets, Twin America has not been good for the Workforce.**

9. Wisdom dictates that we will not spend effort here wrestling with **Professor Willig** over economic theory. We cannot entertain his hypotheticals as life on the Twin America turf is vexing enough. In any event, we wish to point out that in Professor Willig’s most recent Verified Statement (2/18/2011) of 11 pages, we were unable to find a single reference to personnel, staff, workers, or at the very least “surplus labor assets”, his previous description of the Workforce. No notice is made of those who toil at the actual work for Twin America. This speaks volumes as to the Twin America attitude toward the Workforce. Superfluous and insignificant are words that come to mind.

10. Paragraph 19 of Professor Willig’s most recent treatise states, ...“With respect to the second “barrier” to entry the STB failed to acknowledge that he NYC Department of Consumer Affairs controls

the assignment of bus stops and has the ability to re-assign bus stops to encourage competition..." We beg to differ with the Professor. The NYC Department of Consumer Affairs is a consumer protection agency and licensing bureau. We do not believe that the DCA dabbles in the erudite issues of the assignment of bus stops to promote commerce.

11. Applicants have made much of the financial harm which may arise if the STB order is executed. Loans may default is a recurring theme. We wonder why and how loans of great magnitude could, would, should have been made in Twin America's name when it was publically known that Twin America did **not** have its feet firmly planted in the government's soil. Further, would these loans not be considered "fruit from the poison tree", since the initial gambit has been found by the STB to have been conducted unlawfully. Should we then, reward Twin America for starting out unlawfully, by allowing them to climb upward from a tainted foundation?

William O. Douglas

Associate Justice of the United States Supreme Court
Serving from April 17, 1939 – November 11, 1975

"...Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. The fact that they are not vicious men but respectable and social minded is irrelevant. That is the philosophy and the command of the Sherman Act..."

Dissenting, United States v. Columbia Steel Co., 334 U.S.495 (1948)



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CERTIFICATE OF SERVICE

I certify that I have on this 2nd day of May 2011, served a copy of the Amicus Curiae Statement of Karen Fleming by USPS first class mail to:

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